Case No. C 06-05728 RS ORDER TO SHOW CAUSE

Case 5:06-cv-05728-RS Document 4 Filed 10/03/2006 Page 1 of 3 1 2 3 * E-Filed 10/03/2006* 4 5 6 7 8 9 IN THE UNITED STATES DISTRICT COURT 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA 11 SAN JOSE DIVISION 12 13 Case Number C 06-05728 RS IMRAN ABBASS, 14 Plaintiff, ORDER TO SHOW CAUSE 15 v. 16 MICHAEL CHERTOFF, et al., 17 Defendants. 18 19 20 On September 19, 2006, plaintiff Imran Abbass, appearing through counsel, filed a 21 "Complaint For Declaratory Judgment of Naturalization" against defendants Michael Chertoff, 22 Secretary of the Department of Homeland Security; David Still, San Francisco District Director 23 of the United States Citizenship and Immigration Services; and Robert Mueller III, Director of 24 the Federal Bureau of Investigation. 25 Plaintiff alleges defendants have failed to process his application for naturalization in a 26 timely manner, apparently as a result of delays in obtaining a completed background check 27 clearance from the Federal Bureau of Investigation. Plaintiff alleges that Defendants have 28

violated 8 U.S.C. § 1447(b), which provides:

If there is a failure to make a determination under section 1446 of this title before the end of the 120-day period after the date on which the examination is conducted under such section, the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter.

Plaintiff requests that this Court adjudicate the naturalization application and declare that he is entitled to be naturalized.

Good cause therefore appearing, IT IS HEREBY ORDERED as follows:

- (1) The Clerk of the Court shall serve by certified mail a copy of the complaint and a copy of this Order upon counsel for Defendants, the Office of the United States Attorney. The Clerk of the Court also shall serve a copy of this Order upon Plaintiff's counsel of record.
- (2) Defendants shall, within sixty (60) days after receiving service of the complaint, file and serve upon Plaintiff an answer, showing cause why the relief prayed for should not be granted. At the time the answer is filed, Defendants shall lodge with the Court all records relevant to a determination of the issues presented by the complaint. If Defendants contend that Plaintiff has failed to exhaust administrative remedies as to any ground for relief asserted in the complaint, Defendants shall specify what administrative remedy remains available to Plaintiff. If Defendants waive or concede the issue of exhaustion, Defendants shall so state in their answer.
- (3) Plaintiff may file a response to the matters raised in the answer within twenty (20) days after receiving the answer.
- (4) Unless otherwise ordered by the Court, the matter will be deemed submitted upon the filing of the response or upon the expiration of time to file a response.
- (5) No later than the time their respective responses hereunder are due, the parties shall make their determination regarding the issue of consent to the jurisdiction of the Magistrate Judge and file the appropriate form. In the event any party declines to consent to the jurisdiction of the Magistrate Judge, this action will be reassigned to a District Judge for further proceedings.

(6) The Order Setting Initial Case Management Conference and ADR deadlines entered on September 19, 2006 in this action is hereby VACATED.

IT IS SO ORDERED.

Dated: October 2, 2006

RICHARD SEEBORG United States Magistrate Judge